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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN LEGGETT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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BRIEF OF APPELLEE

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

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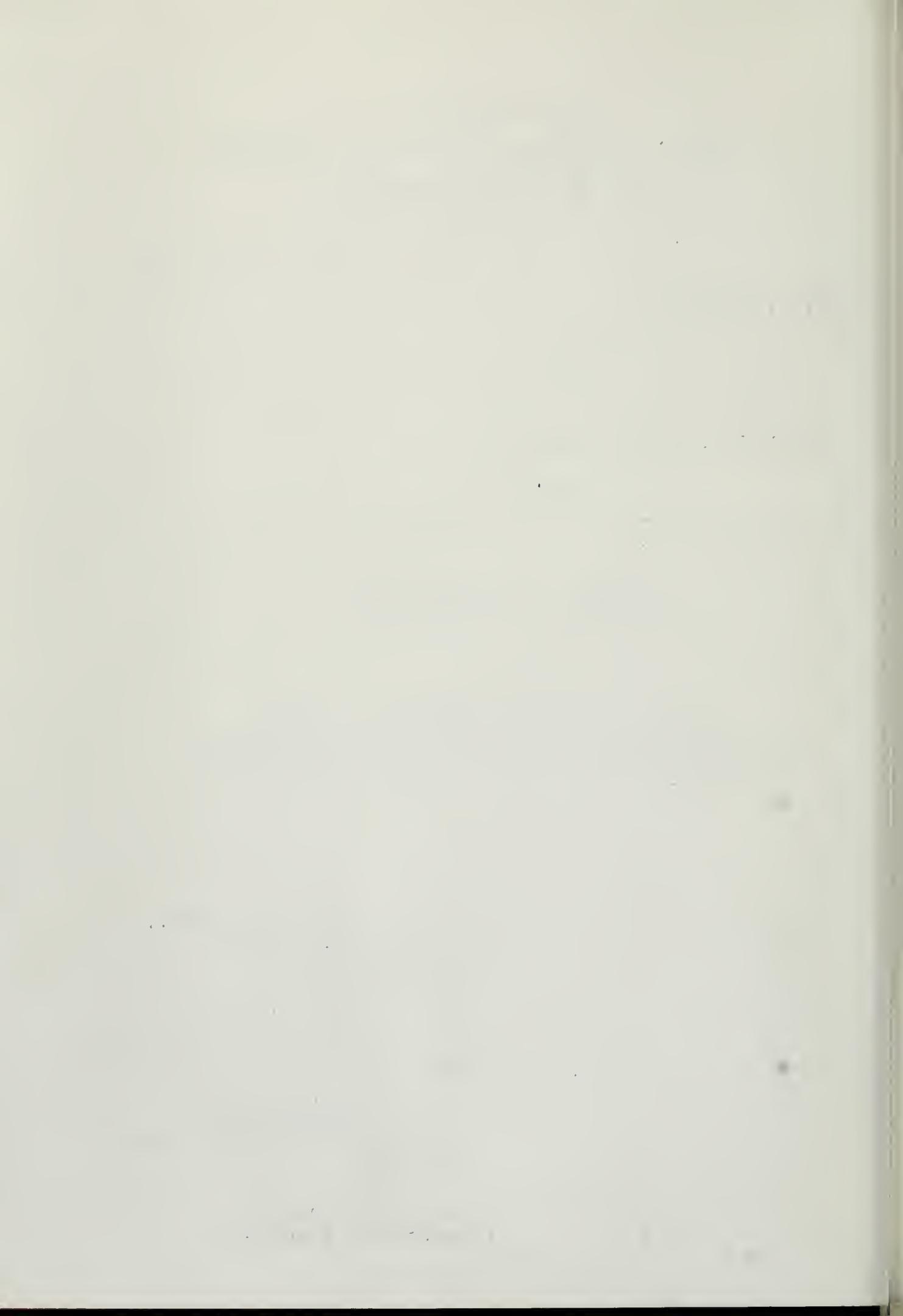
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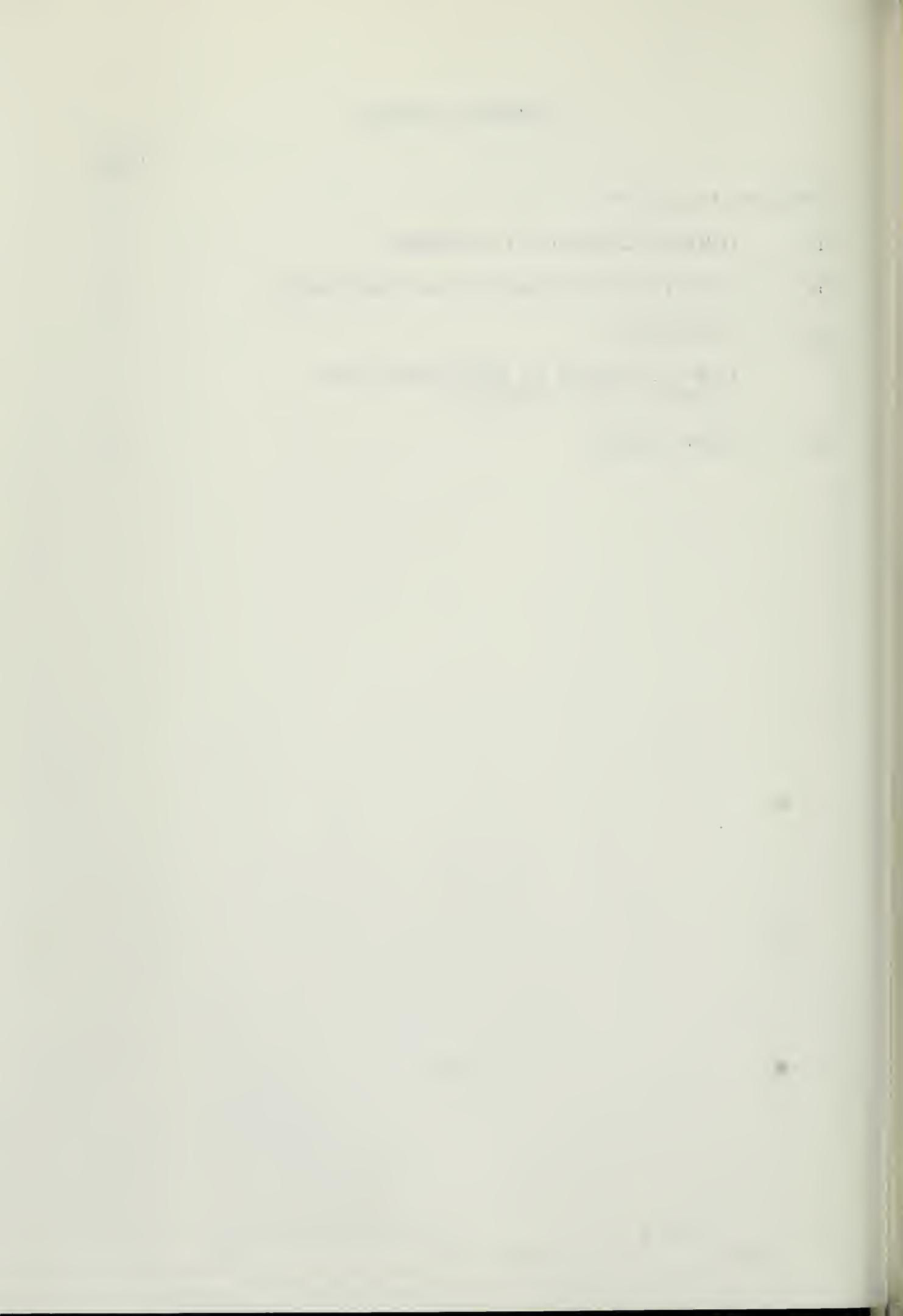


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I

JURISDICTIONAL STATEMENT

On December 27, 1967, the Federal Grand Jury for the Central District of California returned an indictment in one count charging John Leggett and Hosie McCloud with violation of Title 18, United States Code, Section 2113(a)(d). The indictment alleged that John Leggett and Hosie McCloud, knowingly and wilfully attempted to take money belonging to the Bank of America, 6951 Westminster Boulevard, Westminster, California and that in attempting to commit said offense, John Leggett and Hosie McCloud assaulted Arthur J. Schuker, Betty Buhrmester, and Mary Lemke

[C. T. p. 2]. 1/

On January 2, 1968, John Leggett and Hosie McCloud were arraigned and plead not guilty.

On January 30, 1968, John Leggett and Hosie McCloud appeared before the Honorable Charles H. Carr, United States District Judge. Hosie McCloud was permitted to withdraw his plea of not guilty, and the Court accepted his plea of guilty to a violation of Title 18, United States Code, Section 2113(a) [R. T. pp. 3-5]. 2/ John Leggett waived trial by jury [R. T. p. 16]. And on January 30, 1968, a court trial before Judge Carr was begun and John Leggett was found guilty as charged on that day [R. T. p. 112].

On February 19, 1968, John Leggett and Hosie McCloud were sentenced to the custody of the Attorney General for a period of twenty (20) years [R. T. pp. 130-131]. On February 23, 1968, John Leggett filed a timely Notice of Appeal [C. T. p. 15].

Jurisdiction of the District Court was based on Title 18, United States Code, Sections 2113 and 3231. Jurisdiction of this Court is based on Title 28, United States Code, Section 1294(1) and Rule 37(a) of the Federal Rules of Criminal Procedure.

1/ "C. T." refers to Clerk's Transcript.

2/ "R. T." refers to Reporter's Transcript.

COUNTER STATEMENT OF THE FACTS

On the morning of December 6, 1967, John Leggett, Hosie McCloud and Ivan Clark, also known as "Al" and also known as "Robert Smith", met at John Leggett's residence in Los Angeles, California. There, Ivan Clark told John Leggett and Hosie McCloud that he had a "job lined up". John Leggett, accompanied by Hosie McCloud in John Leggett's 1956 white Oldsmobile, drove to Westminster, California. Ivan Clark drove to Westminster, California in another car [R. T. pp. 65-66; pp. 77-80; pp. 82-83].

Somewhere in the vicinity of the Bank of America, 3/ 6951 Westminster Blvd., Westminster, California, 4/ John Leggett and Ivan Clark parked their respective cars. Ivan Clark told John Leggett and Hosie McCloud to wait for him and he left the area where the cars were parked on foot. Ivan Clark returned shortly thereafter and told John Leggett and Hosie McCloud that he had "cased" the place they intended to rob [R. T. pp. 65-67; pp. 84-85].

John Leggett, Hosie McCloud, and Ivan Clark drove past the bank in John Leggett's car several times, and on one occasion Ivan Clark directed attention to the bank [R. T. p. 67; pp. 86-87]. Subsequently, Ivan Clark and Hosie McCloud exited John Leggett's

3/ The deposits of the Bank of America, 6951 Westminster Blvd., Westminster, California are insured by the Federal Deposit Insurance Corporation [R. T. pp. 19-20].

4/ Hereinafter referred to as the bank.

car (Clark in the parking lot of the bank and McCloud near the south entrance to the bank) and John Leggett parked his car near the bank's south entrance [R. T. pp. 35-36; p. 87].

As Hosie McCloud, wearing a mask, entered the bank through its south entrance, he bumped into Walter Hardy, a bank customer who was leaving the bank. After encountering Walter Hardy, Hosie McCloud walked away from the bank toward John Leggett's car in which John Leggett was seated. Ivan Clark, wearing a mask, entered the bank at its north entrance. He ordered the people in the bank to lie on the floor and fired several shots into the ceiling. Thereafter, Hosie McCloud, still wearing a mask, entered the bank [R. T. p. 22; p. 27; p. 31; pp. 35-36; p. 89]. When Arthur Shukar, the Bank Manager, attempted to set off a silent alarm, Ivan Clark pointed a gun at him and said "Hold it". Hosie McCloud jumped over one of the counters and ran behind the teller cages. Apparently Ivan Clark yelled "Time" and Hosie McCloud and Ivan Clark then exited the bank and entered John Leggett's car still masked [R. T. p. 23; p. 27; p. 31; pp. 38-40; p. 93].

Shortly thereafter, John Leggett and Hosie McCloud were arrested [R. T. pp. 46-50]. John Leggett, after being fully advised of his constitutional rights, was interviewed by Federal Bureau of Investigation Agents, Francis A. Calley and Richard Cromwell [R. T. pp. 55-58]. Initially, John Leggett told the interviewing agents that he had driven to the city of Westminster in his 1956 white Oldsmobile with Robert Smith, a friend, for the purpose of looking for a job; that they had stopped at a gas station; and while

he (John Leggett) was in the restroom, Robert Smith disappeared with the 1956 white Oldsmobile; and that a short time thereafter he (John Leggett) and Hosie McCloud were arrested by officers of the Westminster Police Department [R. T. pp. 58-60].

John Leggett then recanted this story, and told the interviewing agents that on the morning of December 6, 1967, A1(LNU) and Hosie McCloud came over to his apartment in Los Angeles; and that he (John Leggett) intended to go to Westminster in response to an advertisement appearing in the newspaper for an automotive mechanic; that he and Hosie McCloud by arrangement met A1(LNU) in Westminster; that A1(LNU) joined him and Hosie McCloud in his car; that A1(LNU) told him he had an account at the bank; that he drove A1(LNU) and Hosie McCloud to the bank; that A1(LNU) and Hosie McCloud entered the bank while he waited outside in his car; that a few minutes later A1(LNU) and Hosie McCloud exited the bank and ran to his car; that A1(LNU) and Hosie McCloud told him to get away from the bank immediately; that he and Hosie McCloud parted company with A1(LNU) and then later he and Hosie McCloud were arrested by officers of the Westminster Police Department [R. T. pp. 60-63].

John Leggett recanted this story also and told the interviewing agents that on the morning of December 6, 1967, Ivan Clark and Hosie McCloud met at his apartment in Los Angeles where the three of them discussed perpetrating a robbery in the city of Westminster; that subsequently, he and Hosie McCloud met Ivan Clark in Westminster; that the three of them drove by the bank in his car several times; that he parked outside the bank while Ivan Clark and Hosie

McCloud entered the bank; and that a few moments later Ivan Clark and Hosie McCloud ran from the bank, entered the car and told him to leave the area immediately. In addition, John Leggett told the interviewing agents that he did not know that Ivan Clark and Hosie McCloud had entered the bank with the intent to rob it; that he did not see Ivan Clark and Hosie McCloud in possession of any masks or guns; and that when Ivan Clark and Hosie McCloud entered his car after exiting the bank, he was not aware that a robbery had been attempted [R. T. pp. 64-70].

At trial John Leggett denied having told the interviewing agents that he had gone to Westminster for the purpose of committing a robbery and also denied that on the morning of December 6, 1967, he had discussed with A1(LNU) and Hosie McCloud the commission of a robbery in the city of Westminster [R. T. pp. 98-100].

John Leggett further testified that he went to Westminster with Hosie McCloud to look for a job as a mechanic; that while he was attempting to locate the address of the mechanics shop he unexpectedly met an acquaintance by the name of Robert Smith who agreed to show him where the mechanics shop was located; that Robert Smith asked him to stop at the bank before proceeding to the mechanics shop; that he drove Robert Smith and Hosie McCloud to the bank and waited outside while they entered the bank; that after Robert Smith and Hosie McCloud exited the bank they re-entered the car and drove away from the bank; and that at no time prior to the attempted bank robbery did he know that Robert Smith and Hosie McCloud intended to rob the bank [R. T. pp. 100-104].

III

ARGUMENT

THE EVIDENCE IS SUFFICIENT TO SUPPORT THE VERDICT

John Leggett's sole contention is that the Government failed to adduce sufficient evidence to show that he was a knowing participant in the attempted bank robbery. It is true that none of the witnesses percipient to the attempted robbery were able to identify John Leggett. Walter Hardy did testify that the fleeing robbers drove off in a white 1956 Oldsmobile [R. T. pp. 36-37]. There is no dispute that the white 1956 Oldsmobile was driven by John Leggett [R. T. p. 68; pp. 91-92; p. 103]. And there is no dispute that Ivan Clark exited John Leggett's car in the parking lot of the bank and that Hosie McCloud exited John Leggett's car near the south entrance to the bank wearing a mask and that when they (Clark and McCloud) re-entered John Leggett's car after exiting the bank they were masked [R. T. pp. 87-92].

It is submitted, on the basis of the foregoing evidence that reasonable minds could find beyond a reasonable doubt that John Leggett was a knowing participant in the attempted bank robbery. However, the Government's proof was not limited to this evidence. F. B. I. Agent Francis A. Calley testified that he interviewed John Leggett and that John Leggett, after relating two conflicting stories, admitted that: On the morning of December 6, 1967, he (John Leggett), Ivan Clark and Hosie McCloud discussed perpetrating a

robbery in the city of Westminster; that the three of them drove by the bank in his car several times and on one occasion Ivan Clark pointed out the bank; that he parked outside the bank while Ivan Clark and Hosie McCloud entered the bank; and that a few moments later Ivan Clark and Hosie McCloud ran from the bank, entered the car and told him to leave the area immediately [R. T. pp. 55-70].

Further, Hosie McCloud, who was called by John Leggett, testified that on the morning of December 6, 1967, Ivan Clark discussed with John Leggett perpetrating a bank robbery in the city of Westminster; that he (McCloud), John Leggett, and Ivan Clark, in John Leggett's car with John Leggett driving, drove by the bank several times; that after Ivan Clark exited John Leggett's car in the parking lot of the bank, he exited the car near the front of the bank; that he and Ivan Clark entered the bank wearing masks; that after exiting the bank, he and Ivan Clark re-entered John Leggett's car still masked and John Leggett drove away from the bank [R. T. pp. 79-92].

The test of the sufficiency of evidence is whether reasonable minds could find that the evidence excludes every hypothesis but that of guilty. Lee v. United States, 376 F. 2d 98 (9th Cir. 1967). In applying this test the court must view the evidence in the light most favorable to the Government. Glasser v. United States, 314 U. S. 60 (1942); Diaz-Rosendo v. United States, 357 F. 2d 124 (9th Cir. 1966). It is respectfully submitted that the evidence meets this standard.

CONCLUSION

For the foregoing reasons, the judgment of conviction should be affirmed.

Respectfully submitted,

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